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6

7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation) Case No. 16-1998-92200
Against:)
12)
13 MICHAEL DAVID COLBURN, M.D.)
502 Birdie Court)
Onalaska, WI 54650) **STIPULATION FOR**
14) **SURRENDER OF LICENSE**
Physician and Surgeon's)
15 Certificate No. G 65614,)
16 Respondent.)
17

18 **IT IS HEREBY STIPULATED AND AGREED** by and between the
19 parties to the above-entitled proceedings, that the following
20 matters are true:

21 1. Complainant, Ronald Joseph, is the Executive
22 Director of the Medical Board of California, Department of
23 Consumer Affairs ("Board") and is represented by Bill Lockyer,
24 Attorney General of the State of California by Gail M. Heppell,
25 Supervising Deputy Attorney General.

26 2. Michael David Colburn, M.D. (hereinafter
27 "respondent") is represented by Dawn Marie Harris, Esq., Parke

1 O'Flaherty, Ltd., U.S. Bank Place, Tenth Floor, 201 Main Street,
2 La Crosse, Wisconsin 54602. Respondent has counseled with his
3 attorney concerning the effect of this stipulation which
4 respondent has carefully read and fully understands.

5 3. Respondent has received and read the Accusation
6 which is presently on file and pending in Case Number 16-1998-
7 92200 before the Board, a copy of which is attached as Exhibit A
8 and incorporated herein by reference.

9 4. Respondent understands the nature of the charges
10 alleged in the Accusation and that, if proven at hearing, such
11 charges and allegations would constitute cause for imposing
12 discipline upon respondent's license issued by the Board.

13 5. Respondent is aware of each of his rights,
14 including the right to a hearing on the charges and allegations,
15 the right to confront and cross-examine witnesses who would
16 testify against respondent, the right to testify and present
17 evidence on his own behalf, as well as to the issuance of
18 subpoenas to compel the attendance of witnesses and the
19 production of documents, the right to contest the charges and
20 allegations, and other rights which are accorded respondent
21 pursuant to the California Administrative Procedure Act (Gov.
22 Code, § 11500 et seq.) and other applicable laws, including the
23 right to seek reconsideration, review by the superior court, and
24 appellate review.

25 6. In order to avoid the expense and uncertainty of a
26 hearing, respondent freely and voluntarily waives each and every
27 one of these rights set forth above and admits the truth of the

1 allegations contained in Accusation No. 16-1998-92200 as follows:

2 On or about June 24, 1998, the State of Wisconsin,
3 Department of Regulation and Licensing, Medical Examining Board,
4 issued a Final Order in case number 97 MED 365 suspending
5 respondent's license to practice medicine and surgery in
6 Wisconsin for a period of not less than five (5) years. It was
7 further ordered that the suspension may be stayed for a period of
8 three (3) months conditioned upon the compliance with certain
9 conditions and limitations. Conditions included a requirement
10 that respondent enroll and successfully participate in a drug and
11 alcohol treatment program satisfactory to the Board, participate
12 in individual or group therapy on at least a weekly basis, and
13 participate in AA or NA. On or about January 26, 2000, the
14 Wisconsin Medical Examining Board issued an order staying the
15 suspension of respondent's license for three (3) months.

16 Respondent agrees that cause exists to discipline his
17 physician and surgeon's license pursuant to Business and
18 Professions Code sections 141 and 2305, and hereby surrenders his
19 license for the Board's formal acceptance.

20 7. Respondent understands that by signing this
21 stipulation he is enabling the Medical Board of California to
22 issue its order accepting the surrender of his license without
23 further process. He understands and agrees that Board staff and
24 counsel for complainant may communicate directly with the Board
25 regarding this stipulation, without notice to or participation by
26 respondent. In the event that this stipulation is rejected for
27 any reason by the Board, it will be of no force or effect for

1 either party. The Board will not be disqualified from further
2 action in this matter by virtue of its consideration of this
3 stipulation.

4 8. Upon acceptance of the stipulation by the Board,
5 respondent understands that he will no longer be permitted to
6 practice as a physician and surgeon in California, and also
7 agrees to surrender and cause to be delivered to the Board both
8 his license and wallet certificate before the effective date of
9 the decision.

10 9. Respondent fully understands and agrees that if he
11 ever files an application for relicensure or reinstatement in the
12 State of California, the Board shall treat it as a petition for
13 reinstatement, the respondent must comply with all the laws,
14 regulations and procedures for reinstatement of a revoked license
15 in effect at the time the petition is filed.

16 10. Respondent understands and that he may not
17 petition for reinstatement as a physician and surgeon for a
18 period of three (3) years from the effective date of his
19 surrender. Information gathered in connection with accusation
20 number 16-1998-92200 may be considered by the Division of Medical
21 Quality in determining whether or not to grant the petition for
22 reinstatement. For the purposes for the reinstatement hearing,
23 the allegations in accusation number 16-1998-92200 shall be
24 deemed to be admitted by respondent, and respondent waives any
25 all defenses based on a claim of laches.

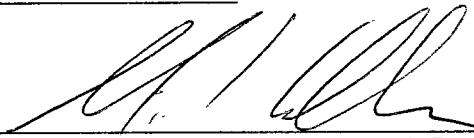
26 11. All recitals contained in this stipulation are
27 made solely for the purpose of settlement in this proceeding and

1 for any other proceedings in which the Medical Board of
2 California or other professional licensing agency is involved,
3 and shall not be admissible in any other criminal or civil
4 proceedings.

5 ACCEPTANCE

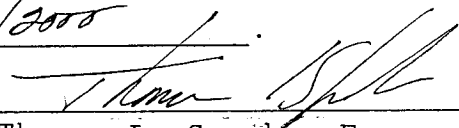
6 I, Michael David Colburn, M.D., have carefully read the
7 above stipulation and enter into it freely and voluntarily and
8 with full knowledge of its force and effect, do hereby surrender
9 my Physician and Surgeon's Certificate No. G 65614, to the
10 Division of Medical Quality, Medical Board of California for its
11 formal acceptance. By signing this stipulation to surrender my
12 license, I recognize that upon its formal acceptance by the
13 Board, I will lose all rights and privileges to practice as a
14 physician and surgeon in the State of California and I also will
15 cause to be delivered to the Board both my license and wallet
16 certificate before the effective date of the decision.

17 DATED: 5/30/00.

18 
19 _____
20 MICHAEL DAVID COLBURN, M.D.
Respondent

21 I have fully discussed with respondent, Michael David
22 Colburn, M.D., terms and conditions and other matters contained
23 in the above Stipulation for Surrender of License and approve its
24 form.

25 DATED: 6/2/00.

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27 _____
Thomas L. Sparks, Esq.
Attorney for Respondent

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ENDORSEMENT

I concur in the stipulation.

DATED: June 9, 2000.

BILL LOCKYER, Attorney General
of the State of California

Gail M. Heppell
Gail M. Heppell
Supervising Deputy Attorney General

Attorneys for Complainant

Exhibit A: Accusation

EXHIBIT A

BILL LOCKYER, Attorney General
of the State of California
GAIL M. HEPPELL
Supervising Deputy Attorney General
1300 I Street, Suite 125
P. O. Box 944255
Sacramento, California 94244-2550
Telephone: (916) 324-5336

Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 22 19 99
BY Tricia Curry ANALYST

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

MICHAEL DAVID COLBURN, M.D.,
502 Birdie Court
Onalaska, WI 54650

Physician and Surgeon's
Certificate No. G 65614

Respondent.

Case No. 16-1998-92200

ACCUSATION

The Complainant alleges:

PARTIES

1. Complainant, Ronald Joseph, is the Executive
Director of the Medical Board of California (hereinafter the
"Board") and brings this accusation solely in his official
capacity.

2. On or about May 8, 1989, Physician and Surgeon's
Certificate No. G 65614 was issued by the Board to Michael David
Colburn, M.D. (hereinafter "respondent"), and at all times

1 relevant to the charges brought herein, this license has been in
2 full force and effect. Said certificate expired on May 31, 1999,
3 and is currently in delinquent status.

4 On April 12, 1999, pursuant to Business and Professions
5 Code section 2310(a) the Board issued an order immediately
6 suspending respondent's license.

7 JURISDICTION

8 3. This accusation is brought before the Division of
9 Medical Quality of the Medical Board of California, Department of
10 Consumer Affairs (hereinafter the "Division"), under the
11 authority of the following sections of the California Business
12 and Professions Code (hereinafter "Code") and/or other relevant
13 statutory enactment:

14 A. Section 2227 of the Code provides in part that the
15 Board may revoke, suspend for a period of not to exceed one
16 year, or place on probation, the license of any licensee who
17 has been found guilty under the Medical Practice Act, and
18 may recover the costs of probation monitoring if probation
19 is imposed.

20 B. Section 125.3 of the Code provides, in part, that
21 the Board may request the administrative law judge to direct
22 any licentiate found to have committed a violation or
23 violations of the licensing act, to pay the Board a sum not
24 to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 C. Section 118(b) of the Code provides, in part, that
27 the expiration of a license shall not deprive the Board of

1 jurisdiction to proceed with a disciplinary action during
2 the time within which the license may be renewed, restored,
3 or reinstated.

4 D. Section 2305 of the Code provides, in part, that
5 the revocation, suspension, or other discipline, restriction
6 imposed by another state upon a license or certificate to
7 practice medicine issued by that state, that would have been
8 grounds for discipline in California of a licensee under
9 this chapter, shall constitute grounds for disciplinary
10 action for unprofessional conduct against the licensee in
11 this state.

12 E. Section 2239(a) of the Code provides, in part,
13 that the use or prescribing for or administering to himself
14 of any controlled substance constitutes unprofessional
15 conduct.

16 F. Section 2238 of the Code provides in part that a
17 violation any statute or regulation of this state regulating
18 dangerous drugs or controlled substances constitutes
19 unprofessional conduct.

20 G. Section 11173 of the Health and Safety Code
21 provides in pertinent part that (a) no person shall obtain
22 controlled substances (1) by fraud, deceit,
23 misrepresentation, or subterfuge; or (2) by concealment of
24 a material fact. (b) No person shall make a false statement
25 in any prescription.

26 H. Section 141 of the Code provides:

27 "(a) For any licensee holding a license issued by a

1 board under the jurisdiction of the department, a
2 disciplinary action taken by another state, by any agency of
3 the federal government, or by another country for any act
4 substantially related to the practice regulated by the
5 California license, may be a ground for disciplinary action
6 by the respective state licensing board. A certified copy
7 of the record of the disciplinary action taken against the
8 licensee by another state, an agency of the federal
9 government, or another country shall be conclusive evidence
10 of the events related therein.

11 I. Section 14124.12(a) of the Welfare & Institutions
12 Code provides in pertinent part that upon written notice of
13 the Medical Board of California a physician and surgeon's
14 medical license has been placed on probation as a result of
15 a disciplinary action, no Medi-Cal claim for the type of
16 surgical service or invasive procedure giving rise to the
17 probationary order and performed on or after the effective
18 date of said probationary order or during the period of
19 probation shall be reimbursed, except upon a prior
20 determination that compelling circumstances warrant the
21 continuance of reimbursement during the probationary period
22 for procedures other than those giving rise to the
23 probationary order.

24 4. Respondent is subject to discipline within the
25 meaning of section 141 and guilty of unprofessional conduct
26 within the meaning of sections 2305, 2239, 2238 in conjunction
27 with Health and Safety Code section 11173 as more particularly

1 set forth hereinbelow.

2 FIRST CAUSE FOR DISCIPLINE

3 (Discipline, Restriction, or Limitation Imposed By Another State)

4 5. Respondent Michael D. Colburn, M.D., is subject to
5 disciplinary action under section 141 of the Business and
6 Professions Code in that on or about June 24, 1998, the State of
7 Wisconsin, Department of Regulation & Licensing, Medical
8 Examining Board, issued a Final Order in case number 97 MED 365
9 suspending respondent's license to practice medicine and surgery
10 in Wisconsin for a period of not less than five (5) years. The
11 suspension may be stayed for a period of three months conditioned
12 upon compliance with certain conditions and limitations. The
13 Order includes Findings of Fact, inter alia, which indicate that
14 from 8-9-96 through 11-7-97, respondent phoned in prescriptions
15 for hydrocodone and codeine purportedly for his wife using her
16 maiden name. Respondent prescribed and obtained the medication
17 for his own personal use. It was further determined respondent
18 issued and filled prescriptions at more than one pharmacy on the
19 same day or at a two or three day interval which was excessive
20 since the prescriptions were for a six to seven day supply.

21 Attached as Exhibit A is a true and correct copy of the
22 certified Final Order of the State of Wisconsin Medical Examining
23 Board.

24 SECOND CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct, Violation of Drug Statutes)

26 6. Complainant reallages paragraph 5, above, and
27 incorporates it herein by reference as if fully set forth at this

1 point.

2 7. Respondent's conduct as set forth in paragraph 5,
3 above, in prescribing controlled substances to himself, obtaining
4 controlled substances by fraud and deceit and by writing false
5 prescriptions constitutes unprofessional conduct within the
6 meaning of Code sections 2305, 2239, and 2238 in conjunction with
7 Health and Safety Code section 11173.

8 PRAYER

9 WHEREFORE, the complainant requests that a hearing be
10 held on the matters herein alleged, and that following the
11 hearing, the Division issue a decision:

12 1. Revoking or suspending Physician and Surgeon's
13 Certificate Number G 65614, heretofore issued to respondent
14 Michael David Colburn, M.D.;

15 2. Revoking, suspending or denying approval of the
16 respondent's authority to supervise physician assistants,
17 pursuant to Code section 3527;

18 3. Ordering respondent to pay the Division the actual
19 and reasonable costs of the investigation and enforcement of this
20 case and to pay the costs of probation monitoring upon order of
21 the Division; and

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4. Taking such other and further action as the
Division deems necessary and proper.

DATED: June 22, 1999.



RONALD JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

EXHIBIT A

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

MICHAEL D. COLBURN, M.D.
RESPONDENT.

FINAL DECISION AND ORDER
97 MED 365

LS9807237MED

The parties to this action for the purposes of § 227.53, Wis. Stats., are:

Dr. Michael D. Colburn, M.D.
502 Birdie Court
Onalaska, WI 54650

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Michael D. Colburn (dob [REDACTED]) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license # 37701, first granted on 5-24-96. Respondent is a vascular surgeon.

2. From 8-9-96 through 11-7-97, respondent phoned in prescriptions for hydrocodone 5mg and codeine 30 mg purportedly for his wife using his wife's maiden name. Respondent prescribed 2460 tablets at five different pharmacies over this 479 day period and was using 5-6 tablets per day. Respondent then picked up this medication himself at each pharmacy. His wife had no medical condition that required the use of these medications. Respondent prescribed and obtained the medication for his personal use.

3. On several occasions, prescriptions were issued and filled at more than one pharmacy on the same day or at a two to three day interval. This was excessive use because the prescriptions were for a six to seven day supply.

11-26-96 CUB Pharmacy	hydrocodone 500mg	60 tablets
11-26-96 Shopko Pharmacy	codeine 30mg	60 tablets
12-26-96 Shopko Pharmacy	codeine 30mg	60 tablets
12-27-96 Cub Pharmacy	hydrocodone 500mg	60 tablets

3-27-97 Cub Pharmacy	hydrocodone 500mg	60 tablets
3-28-97 Quillin's Pharmacy	hydrocodone 500mg	60 tablets
4-27-97 Cub Pharmacy	hydrocodone 500mg	60 tablets
4-30-97 Quillin's Pharmacy	hydrocodone 500mg	60 tablets
9-20-97 CUB Pharmacy	hydrocodone 500mg	60 tablets
9-24-97 Service Pharmacy	hydrocodone 500mg	60 tablets
10-10-97 Cub Pharmacy	hydrocodone 500mg	60 tablets
10-10-97 Quillin's Pharmacy	hydrocodone 500mg	60 tablets
10-27-97 Quillin's Pharmacy	hydrocodone 500mg	60 tablets
10-29-97 Service Pharmacy	hydrocodone 500mg	60 tablets

4. On 11-7-97, respondent entered treatment at the Mayo Clinic in Rochester, Minnesota. Respondent was diagnosed with opiate withdrawal, opiate dependence, and depressive disorder. On 12-3-97, respondent was discharged from inpatient treatment.

5. Between 12-8-97 through 2-17-98, respondent was in an outpatient follow-up program at Gunderson Lutheran in La Crosse, WI.

6. On or about 11-7-97, respondent stated to a La Crosse Police Detective who was investigating this matter that he had prescribed the hydrocodone described above for his wife, who had recently given birth. This statement was false, was known by respondent to be false when made, and was made with the intent that the detective be misled in his investigation of the matter.

7. In March 1998, respondent relocated to Traverse City, Michigan. Respondent is currently in treatment in Traverse City and is not presently practicing medicine.

CONCLUSIONS OF LAW

A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in paragraphs 2, and 3, above, violated §961.38(5), Wis. Stats., and § Med 10.02(2)(p) and (z), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in paragraph 6, above, violated §946.41(1), Wis. Stats., and § Med 10.02(2)(z), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED that effective on the date of this Order, the license to practice medicine and surgery of respondent is SUSPENDED for a period of not less than five (5) years. The suspension may be STAYED for a period of three months, conditioned upon compliance with the conditions and limitations outlined below.

- a. Respondent may apply for an initial stay, and then for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period. "Three months" means until the third regular Board meeting after the meeting at which any stay of suspension is granted.
- b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in ch. RL 1, Wis. Adm. Code upon timely receipt of a request for hearing.
- c. Upon a showing by respondent of successful compliance for a period of five years of active practice with the terms of this order and upon a showing that respondent has made satisfactory restitution for any losses caused by the conduct described above and compliance with all other terms of this Order, the Board may grant a petition by the Respondent for return of full licensure. (See ¶25, below.)
- d. The applications for stays of suspension, and all required reports under this Order, shall be due on the first day of the month of the Board meeting during which respondent wants the initial stay to take effect, and for extensions the application and all required reports are due on the 1st day of the third month following the granting of the initial stay, and each three months thereafter, for the period that this Order remains in effect.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of respondent is LIMITED as set forth in §448.02(3)(e), Wis. Stats., and as follows:

1. Respondent shall not engage in the practice of medicine and surgery in any capacity unless in full compliance with the rehabilitation and treatment programs specified and approved under this Order. Respondent shall forthwith surrender all indicia of registration to the Department by mail or in person, and the Department shall then issue limited registration credentials to respondent. Respondent shall also surrender all indicia of registration to any agent of the Department who requests them.

REHABILITATION, MONITORING AND TREATMENT

Treatment Required

2. Respondent shall enroll and continue successful participation in all components of a drug and alcohol treatment program at a treatment facility acceptable to the Board as respondent's Supervising Health Care Provider shall determine to be appropriate for respondent's rehabilitation. Respondent shall commence involvement in the drug and alcohol rehabilitation program within 5 days of the date of the Final Decision and Order of the Board. Professional Recovery Network and its affiliated programs are acceptable treatment facilities. *The Respondent's treatment program in Michigan must be comparable to what would be required in Wisconsin.

Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may

be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under §§ 227.01(3) or 227.42, Wis. Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

AA/NA Meetings. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

Supervising Health Care Provider

3. Respondent shall obtain a Supervising Health Care provider acceptable to the Board for the full term of this limited license. The Supervising Health Care Provider shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order. The Supervising Health Care Provider may designate another qualified health care provider acceptable to the Board to exercise the duties and responsibilities of the Supervising Health Care Provider in his or her absence. In the event that a supervising Health Care Provider is unable or unwilling to serve as Supervising Health Care Provider, the Board shall in its sole discretion select a successor Supervising Health Care Provider.

Sobriety

4. Respondent shall abstain from all personal use of controlled substances as defined in Sec. 161.01(4), Stats. except when necessitated by a legitimate medical condition and then only with the prior approval of the Supervising Health Care Provider.
5. Respondent shall abstain from all personal use of alcohol.
6. Respondent shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, or which may create false positive screening results, or which may interfere with respondent's treatment and rehabilitation. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by respondent to the Supervising Health Care Provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Within 24 hours of a request by the Supervising Health Care Provider or the Board or its designee, Respondent shall provide releases which comply with state and federal laws authorizing release of all health care records by the person who prescribed, dispensed, administered or ordered this medication for respondent. These releases shall also authorize the Supervising Health Care Provider, the Board or its designee to discuss the Respondent's health care with the person who prescribed, dispensed, administered or ordered this medication. The terms of this paragraph shall not be deemed to modify or negate Respondent's obligations as set forth in this Order.

Department Monitor

7. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor
Department of Regulation Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-7139

Releases

8. Respondent shall provide and keep on file with the Supervising Health Care Provider, all treatment facilities and personnel, laboratories and collections sites current releases which comply with state and federal laws authorizing release of all urine, blood and hair specimen screen results and medical and treatment records and reports to, and permitting the Supervising Health Care Provider and all treating physicians and therapists to disclose and discuss the progress of respondent's treatment and rehabilitation with the Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

Drug and Alcohol Screens

9. Respondent shall supply on at least a twice-weekly basis, random monitored urine, blood or hair specimens as the Supervising Health Care Provider shall direct. The Supervising Health Care Provider (or designee) shall request the specimens from Respondent and these requests shall be random with respect to the hour of the day and the day of the week. In addition, the Board or its designee may at any time request a random monitored urine, blood or hair specimen from Respondent by directing the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement to contact Respondent and request Respondent provide a specimen. To prevent the respondent's ability to predict that no further screens will be required for a given period (because the minimum frequency for that period has been met), the program of monitoring shall require respondent to provide in each quarter at least two (2) random screenings in excess of the minimums specified in this Order.
10. Respondent shall keep the Supervising Health Care Provider informed of Respondent's location and shall be available for contact by the Supervising Health Care Provider at all times.
11. All requested urine, blood or hair specimens shall be provided by Respondent within five (5) hours of the request for the specimen. All urine specimen collections shall be a split sample accomplished by dividing urine from a single void into two specimen bottles. The total volume of the split sample shall be at least 45 ml. of urine. All split sample urine specimens, blood specimens and hair specimens shall be collected, monitored and chain of custody maintained in conformity with the collection, monitoring and chain of custody procedures set forth in 49 CFR Part 40. Urine specimen collections shall be by direct observation if:
 - a. The Respondent must provide an additional specimen because Respondent's initial specimen was outside of the normal temperature range (32.5 - 37.7°C/90.5 - 99.8°F) and respondent refuses to have an oral body temperature measurement or respondent does provide an oral body temperature measurement and the reading varies by more than 1°C/1.8°F from the temperature of the urine specimen;
 - b. Respondent's last provided specimen was determined by the laboratory to have a specific gravity of less than 1.003 and creatinine concentration below 0.2 g/l;
 - c. The collection site person observes Respondent acting in such a manner to provide reason to believe that Respondent may have attempted or may attempt to substitute or adulterate the specimen. The collection site person, if he or she believes that the initial urine

specimen may have been adulterated or a substitution made, shall direct Respondent to provide an additional observed urine specimen;

- d. The last provided specimen resulted in a positive or suspected positive test result for the presence of controlled substances; or
- e. The Board (or any member of the Board), the Department Monitor, or Respondent's Supervising Health Care Provider directs that the urine specimen collection be by direct observation.

If either of the above conditions (a) or (c) requires collection of an additional observed urine specimen, the collection of the subsequent specimen shall be accomplished within the required five (5) hours of the request for the initial specimen; the collection of the initial specimen shall not satisfy the requirement that the urine specimen be collected within five (5) hours of the request for the initial specimen.

- 12. The drug and alcohol treatment program in which Respondent is enrolled shall at all times utilize a United States Department of Health and Human Services certified laboratory for the analysis of all specimens collected from Respondent.
- 13. The drug and alcohol treatment program in which Respondent is enrolled shall utilize only those urine, blood and hair specimen collection sites for collection of Respondent's urine, blood or hair specimens as comply with the United States Department of Transportation collection and chain of custody procedures set forth in 49 CFR Part 40.
- 14. The Supervising Health Care Provider, treatment facility, laboratory and collection site shall maintain a complete and fully documented chain of custody for each urine, blood or hair specimen collected from Respondent.
- 15. Every urine specimen collected from Respondent shall be analyzed at the time of collection for tampering by measurement of the temperature of the specimen and the oral temperature of Respondent. Every urine specimen collected from Respondent shall be further analyzed at the laboratory for tampering by measuring the creatinine concentration and the specific gravity of the specimen. The laboratory may at its discretion or at the direction of a Supervising Health Care Provider or the Board or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.
- 16. Every urine, blood or hair specimen collected from Respondent shall be analyzed for alcohol, amphetamine, cocaine, opiates, phencyclidine, marijuana, methadone, propoxyphene, methaqualone, barbiturates, benzodiazepines, or the metabolites thereof. The Board or its designated agent may at any time direct that screens for additional substances and their metabolites be conducted by scientific methods and instruments appropriate to detect the presence of these substances. The laboratory shall conduct confirmatory tests of positive or suspected positive test results by appropriate scientific methods and instruments including, but not limited to, gas chromatography and mass spectrometry.
- 17. All urine, blood or hair specimens remaining after testing shall be maintained in a manner necessary to preserve the integrity of the specimens for at least seven (7) days; and all positive or suspected positive urine, blood or hair specimens remaining after testing shall be so maintained for a period of at least one (1) year. The Supervising Health Care Provider or the Board or any member thereof may direct that the urine, blood or hair specimens be maintained for a longer period of time.

18. For the purpose of further actions affecting Respondent's license under this Order, it shall be presumed that all confirmed positive reports are valid. Respondent shall have the burden of proof to establish that the positive report was erroneous and that the respondent's specimen sample did not contain alcohol or controlled substances or their metabolites.
19. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Supervising Health Care Provider shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

Required Reporting by Supervising Health Care Provider, and laboratories

20. The Supervising Health Care Provider shall report immediately to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability to locate Respondent to request a specimen. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood or hair specimens which are positive or suspected positive for controlled substances or alcohol to the Department Monitor, and to the Supervising Health Care Provider.
21. The laboratory shall within 48 hours of completion of each drug or alcohol analysis mail the report from all specimens requested of Respondent under this Order to the Department Monitor (regardless of whether the laboratory analysis of the specimen was positive or negative for controlled substances, their metabolites or alcohol). Each report shall state the date and time the specimen was requested; the date and time the specimen was collected; the results of the tests performed to detect tampering; and the results of the laboratory analysis for the presence of controlled substances and alcohol.
22. The Supervising Health Care Provider shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program and summarize the results of the urine, blood or hair specimen analyses. The Supervising Health Care Provider shall report immediately to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Respondent

23. Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider, treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

24. If the Board determines that the Supervising Health Care Provider, treatment facility, laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Respondent continue treatment and rehabilitation under the direction of another Supervising Health Care Provider, treatment facility,

laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

PETITIONS FOR MODIFICATION OF TERMS

25. Respondent shall appear before the Board at least annually to review the progress of treatment and rehabilitation. Respondent may petition the Board for modification of the terms of this limited license and the Board shall consider Respondent's petition at the time it meets with Respondent to review the progress of rehabilitation. Any such petition shall be accompanied by a written recommendation from respondent's Supervising Health Care Provider expressly supporting the specific modifications sought. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Sec. 227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for modification of the limited license.

After five years of continuous active professional practice under this Order and without relapse, upon satisfactory restitution of any losses caused by respondent's conduct which led to this Order, and upon recommendation of the Supervising Health Care Provider and Professional Mentor, respondent may petition the Board for a termination of all limitations on the license, and restoration of an unlimited license. Such restoration shall be in the sole discretion of the Board, and denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Sec. 227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for termination of the limitations and restoration of unlimited licensure.

EXPENSES OF TREATMENT AND MONITORING

26. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order.

PRACTICE LIMITATIONS

Change in Address or Work Status

27. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.
28. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, and to any prospective employer when respondent applies for employment as a health care provider.

IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$150, within 30 days of this order.

IT IS FURTHER ORDERED, that respondent is REPRIMANDED for his conduct in giving false information to the investigating police detective in this matter. But for the fact that respondent has not been practicing medicine for several months pursuant to informal agreement with the Board and has thus been effectively suspended during that time, respondent's license would have been suspended for not less than thirty days for this conduct. But for his circumstances in having lost his income and employment, he also would have been ordered to pay a forfeiture for this conduct.

IT IS FURTHER ORDERED, that pursuant to §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and

Order. the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.

July 23
Dated this ~~June 24~~, 1998.

WISCONSIN MEDICAL EXAMINING BOARD

by: *Wanda Roever*
a member of the Board

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